

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1787 - SB 1764

March 29, 2018

SUMMARY OF BILL: Requires agencies to pay reasonable expenses incurred, including a reasonable attorney's fee, to parties involved in contested cases involving citations issued by the agency, in certain instances.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures – Exceeds \$160,000

Assumptions:

- Under current law, pursuant to Tenn. Code Ann. § 4-5-325, if a state agency issues a citation to a person, local governmental entity, board, or commission for the violation of a rule or regulation, and an administrative law judge or hearing officer determines that the citation was issued improperly, the administrative law judge or hearing office may order the agency to pay the party issued the citation reasonable expenses incurred because of the citation, including a reasonable attorney's fee.
- The proposed language would require an administrative law judge or hearing office to assess such costs against the agency in favor of the party for improper issuance of a citation.
- Requiring agencies to pay reasonable costs for such parties will result in a recurring increase in state expenditures.
- While a precise amount which will be awarded constituting "reasonable expenses" cannot be determined, each award is estimated to exceed \$5,000.
- It is reasonably estimated that two cases annually will be awarded reasonable expenses as a direct result of this legislation resulting in a recurring increase in state expenditures estimated to exceed \$10,000 (\$5,000 per case x 2 cases).
- Pursuant to Tenn. Code Ann. § 4-5-322, any party aggrieved by a final decision in a contested case is entitled to judicial review by the Davidson County Chancery Court, and pursuant to Tenn. Code Ann. § 4-5-323, any party who is aggrieved by such final judicial review may then seek a final judgement by appealing to the Tennessee Court of Appeals.
- The proposed language would award any person who seeks a judicial or final review by the Court of Appeals to recover an amount of reasonable expenses incurred during the judicial proceedings, including attorney's fees, from the agency involved, regardless of judicial determination.

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- Based on information provided by the Department of Health, approximately 125 contested cases are initiated each year involving citations issued by the Department, with approximately 10 of the 125 contested cases moving forward with judicial review.
- The proposed language will result in a greater number of contested cases going to judicial review.
- It is reasonably estimated that at least 30 contested cases will go to judicial review as a direct result of this legislation.
- The proposed language is estimated to result in a recurring increase in state expenditures estimated to exceed \$150,000 (30 cases to judicial review x \$5,000 per case) statewide.
- The total recurring increase in state expenditures is estimated to exceed \$160,000 (\$10,000 + \$150,000).

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/jrh